

Applicant respectfully requests that the Notice of Abandonment be withdrawn and the application continue to be examined in light of Applicant's April 3, 2003 reply.

REMARKS

Applicant received the Notice of Abandonment on October 21, 2003, shown in Exhibit 1, stating that the present application was deemed abandoned due to Applicant's alleged failure to reply to an Office Action mailed on January 9, 2003. However, on April 3, 2003, Applicant filed with the Office an Amendment in response to the January 9, 2003 Office Action and a Fifth Supplemental Information Disclosure Statement Pursuant to 37 C.F.R. §§ 1.97 and 1.98, with a Form 1449A and a copy of the reference cited therein, all having a Certificate of Mailing pursuant to 37 C.F.R. § 1.8. Attached hereto as Exhibit 2 is a copy of each of the papers filed by Applicant on April 3, 2003. As indicated by the Return Postcard located at the last page of Exhibit 2, the Office received all of the papers identified in Exhibit 2 on April 8, 2003. Because Applicant within 3 months of the mailing of the Office Action timely filed a reply to the Office Action mailed January 9, 2003, Applicant respectfully submits that the issuance of the Notice of Abandonment was in error.

Further, because Applicant mailed the papers in Exhibit 2 with a Certificate of Mailing pursuant to 37 C.F.R. § 1.8, and the Office received all of the papers on April 8, 2003, as evidenced by the Office's postmark, Applicant respectfully submits that the issuance of the Notice of Abandonment was not due to the fault of Applicant. As such, Applicant submits that no fees are due for the filing of this Request. However, in the event that fees are due, the Commissioner is authorized to charge any additional fees which may be required (or credit any overpayment) to Account No. 50-

Application Serial No. 09/877,341

Request To Withdraw the Holding of Abandonment dated October 22, 2003

Response to Notice of Abandonment dated October 16, 2003

0897, Order No. 86821/AFM. Reconsideration of this application is respectfully requested.

As noted above in the Certificate of Mailing, this Request is being filed within one day of Applicant receiving the Notice of Abandonment. In light of the fact that the issuance of the Notice of Abandonment is in error, and not the fault of Applicant, Applicant respectfully requests that all allowable patent term adjustments be made in its favor.

In view of the above remarks, Applicant respectfully requests that the holding of abandonment be withdrawn, that the Amendment and a Fifth Supplemental Information Disclosure Statement Pursuant to 37 C.F.R. §§ 1.97 and 1.98 identified in Exhibit 2 be entered and made of record, and, in light of the papers identified in Exhibit 2, that a notice of allowance be issued with respect to claims 1-23. In order to expedite the examination of this application, Applicant requests the Examiner to contact the undersigned at (713) 220-4168 to discuss any matters that can be resolved by telephone.

Respectfully submitted,

Date: October 22, 2003


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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/877,341	06/08/2001	Gerald B. Eaton	86821	1029

7590 10/16/2003

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EXAMINER

MCAVOY, ELLEN M

ART UNIT

PAPER NUMBER

1764

DATE MAILED: 10/16/2003

RECEIVED OCT 21 2003

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED
JAN 27 2004
TC 1700

Notice of Abandonment



Application No.

09/877,341

Examiner

Ellen M McAvoy

Applicant(s)

EATON ET AL.

Art Unit

1764

RECEIVED


JAN 27 2004

TC 1700

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address.

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 09 January 2003.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:


Ellen M. McAvoy
Primary Examiner
Art Unit: 1764

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.